

Approved by the Governor
MAY 31 2002

ACT 077

THE SENATE
TWENTY-FIRST LEGISLATURE, 2002
STATE OF HAWAII

S.B. NO. 2179
S.D. 2
H.D. 1
C.D. 2

A BILL FOR AN ACT

RELATING TO ENERGY RESOURCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I.

SECTION 1. The legislature finds that gasoline is an energy resource, and that there is a need to ensure lower gasoline prices for Hawaii's consumers. Although gasoline prices have fallen to their lowest levels in years, and mainland consumers have been enjoying less expensive prices, there is evidence that Hawaii's consumers still continue to pay a large premium at the pump.

The legislature finds that the price of gasoline is a pivotal component in determining the future of the State's total energy situation. The cost of gasoline permeates every aspect of Hawaii's energy economy from the petroleum manufacturer to the gas station and finally to the ultimate payer, the people of Hawaii. As a result, no one in this State, resident or visitor, can escape the impact of the cost of gasoline.

The legislature has had long-standing and serious concerns over the high price of gasoline in the State of Hawaii, especially since prices in Hawaii have often been far in excess

1 of the prices observed in other markets in the United States.
2 In past hearings held by the legislature, the oil companies have
3 represented that the market for gasoline in Hawaii was
4 competitive, and that the high gasoline prices in Hawaii were
5 attributable to the high cost of doing business in the State of
6 Hawaii.

7 The legislature finds that the evidence obtained and
8 developed in the State's antitrust lawsuit shows that the high
9 cost of doing business in Hawaii has not been and is not the
10 cause of the high gasoline prices. Rather, the evidence
11 indicates among other matters, the following:

- 12 (1) Retail gasoline prices in the State of Hawaii have
13 been much higher than the prices observed in other
14 oligopolistic and equally concentrated markets;
- 15 (2) Retail gasoline prices in the State of Hawaii have
16 exhibited far less volatility, as well as abnormal
17 stability, in comparison to prices observed in other
18 oligopolistic and equally concentrated markets; and
- 19 (3) The major oil companies have been realizing profit
20 margins far in excess of the margins realized in other
21 oligopolistic and equally concentrated markets.

1 More recently, the oil companies have argued that high
2 gasoline prices, high profit margins, and the lack of vigorous
3 competition are the inevitable results of the oligopolistic
4 structure of the Hawaii market.

5 In essence, the oil companies have now recognized that the
6 structure of the Hawaii market is not one that will encourage
7 competition. Rather, the structure of the market will
8 perpetuate high and rising prices, supra-competitive margins,
9 and a lack of competition.

10 The legislature finds that affirmative action is necessary
11 to address the uncompetitive market, and that this action
12 requires a multi-pronged response, especially in light of the
13 recent ruling issued by the United States District for the
14 District of Hawaii in Chevron U.S.A., Inc. v. Benjamin J.
15 Cayetano, et al., Civil No. 97-00933 SCM, in which the court
16 held that the lease rent cap statute in Act 257 passed by the
17 legislature in 1997 was unconstitutional.

18 Accordingly, the purposes of this part are to:

19 (1) Establish wholesale and retail gasoline price caps by:

1 (A) Requiring the public utilities commission to
2 determine the maximum pre-tax wholesale price of
3 regular unleaded gasoline, on a weekly basis;

4 (B) Prohibiting petroleum manufacturers or jobbers
5 from selling regular unleaded gasoline to a
6 dealer operated retail service station for more
7 than the maximum pre-tax wholesale price;

8 (C) Requiring the public utilities commission to
9 determine the maximum pre-tax retail price of
10 regular unleaded gasoline, on a weekly basis;

11 (D) Prohibiting retailers from selling gasoline to
12 the public for more than the maximum pre-tax
13 retail price for regular unleaded gasoline sold
14 on a self-serve basis;

15 (E) Giving the governor the power to suspend the
16 operation of the wholesale and retail price caps
17 whenever the governor determines that the
18 operation of this law causes a major adverse
19 impact on the economy, public order, or the
20 health, welfare, or safety of the people of
21 Hawaii. The suspension will be in effect until
22 the June 30 of the year of the next succeeding

1 regular session. If the legislature makes no
2 change, the rate reverts to the previously
3 established rate;

4 (F) Providing for a procedure to adjust the maximum
5 prices; and

6 (G) Maintaining the lease rent cap for dealer
7 operated retail stations;

8 (2) Amend the Petroleum Industry Reporting Act to:

9 (A) Require, rather than allow, the department of
10 business, economic development, and tourism to
11 monitor the oil industry's profit margins in
12 Hawaii and conduct random or periodic audits and
13 inspections of oil suppliers;

14 (B) Substantially increase civil penalties for
15 noncompliance;

16 (C) Require the department to refer intentional
17 violations to the attorney general, who may
18 exercise appropriate legal or equitable remedies
19 available to the State; and

20 (D) Change references to the department and the
21 director of business, economic development, and
22 tourism in the Petroleum Industry Reporting Act

1 to the "petroleum commissioner", who is to be the
2 head of the department's energy, resources, and
3 technology division;

4 (3) Require the department of business, economic
5 development, and tourism to:

6 (A) Review and analyze the unsealed documents in
7 Anzai v. Chevron et al. (the recently settled
8 gasoline antitrust litigation) and other
9 appropriate materials;

10 (B) Gather and analyze empirical data to determine
11 whether the Oil Price Information Service index
12 or other appropriate benchmarks are applicable to
13 Hawaii's markets;

14 (C) Review options available to the legislature,
15 including wholesale and retail gasoline price
16 caps and the potential effects of imposing price
17 caps; and

18 (D) Report findings and recommendations to the
19 legislature before the convening of the 2003
20 regular session, including proposed implementing
21 legislation, as appropriate;

(4) Require the attorney general and the legislative reference bureau to assist the department by conducting legal and policy analyses, as appropriate, and in drafting legislation; and

(5) Appropriate \$250,000 out of the public utilities commission special fund to the general fund, and appropriate the same amount to the department of business, economic development, and tourism to allow the department to contract with one or more petroleum experts to assist the department.

SECTION 2. Chapter 486H, Hawaii Revised Statutes, is amended as follows:

1. By adding three new sections to be appropriately designated and to read as follows:

"§486H-A Maximum pre-tax wholesale price for the sale of gasoline; civil actions. (a) Notwithstanding any law to the contrary, no manufacturer, wholesaler, or jobber may sell regular unleaded gasoline to a dealer retail station, an independent retail station, or to another jobber or wholesaler at a price above the maximum pre-tax wholesale prices established pursuant to subsection (b). The commission shall

1 publish the maximum pre-tax wholesale prices by means that shall
2 include the internet website for the State of Hawaii.

3 (b) On a weekly basis, the commission shall determine the
4 maximum pre-tax wholesale price of regular unleaded gasoline for
5 each island as follows:

6 (1) For the island of Oahu, the maximum pre-tax wholesale
7 price of regular unleaded gasoline shall consist of
8 the baseline price for regular unleaded gasoline, plus
9 the location adjustment factor, and the marketing
10 margin factor; and

11 (2) For the islands of Kauai, Molokai, Lanai, Maui, and
12 Hawaii, the maximum pre-tax wholesale price of regular
13 unleaded gasoline shall consist of the maximum pre-tax
14 wholesale price of regular unleaded gasoline for Oahu,
15 plus the neighbor island wholesale adjustment factor.

16 (c) The baseline price for regular unleaded gasoline for
17 Oahu referred to in subsection (b) shall be determined on a
18 weekly basis, and shall be equal to the average of:

19 (1) The spot pipeline daily price for regular unleaded
20 gasoline for Los Angeles;

21 (2) The spot pipeline daily price for regular unleaded
22 gasoline for San Francisco; and

1 (3) The spot daily price for the Pacific Northwest,
2 as reported and published by the Oil Price Information Service
3 for the five business days of the preceding week.

4 (d) The location adjustment factor referred to in
5 subsection (b) shall be \$.04 per gallon for the first year after
6 the effective date of this section, and shall thereafter be
7 subject to annual adjustment pursuant to section 486H-D(a).

8 (e) The marketing margin factor referred to in subsection
9 (b) shall be \$.18 per gallon for the first year after the
10 effective date of this section, and shall thereafter be subject
11 to annual adjustment pursuant to section 486H-D(a).

12 (f) The neighbor island wholesale adjustment factor shall
13 be the sum of the neighbor island location adjustment factor,
14 plus the neighbor island marketing factor.

15 (g) The neighbor island location adjustment factor shall
16 be \$.04 per gallon for the first year after the effective date
17 of this section, and shall thereafter be subject to annual
18 adjustment pursuant to section 486H-D(a).

19 (h) The neighbor island marketing factor shall be \$.04 per
20 gallon for the first year after the effective date of this
21 section, and shall thereafter be subject to annual adjustment
22 pursuant to section 486H-D(a).

1 (i) Any manufacturer, wholesaler, or jobber who knowingly
2 violates any requirement imposed or rule adopted under this
3 section shall be subject to a civil penalty for each such
4 violation, which penalty shall be three times the overcharge, or
5 \$250,000, whichever is greater, and shall be liable for the
6 costs of the action, and reasonable attorney's fees as
7 determined by the court. Within two years from the date the
8 commission obtains actual knowledge of the violation, the
9 commission may institute a civil action in a court of competent
10 jurisdiction to collect the civil penalty, the costs, and
11 attorney's fees. In the case of ongoing violation, the two year
12 period shall start from the date of the last violation. The
13 commission may refer any such action to the attorney general as
14 it deems appropriate. As used in this subsection, "overcharge"
15 means the number of gallons of gasoline sold, times the
16 wholesale price at which the manufacturer or jobber sold regular
17 unleaded gasoline to a dealer retail station, less taxes
18 assessed, less the maximum pre-tax wholesale price established
19 pursuant to subsection (b).

20 (j) The commission shall have the power to determine the
21 extent to which a manufacturer, wholesaler, or jobber is
22 complying with any requirement imposed or rule adopted under

1 this section, including the power to compel a manufacturer,
2 wholesale, or jobber to submit documents, data and information
3 necessary and appropriate for the commission to determine such
4 compliance. The commission may use data collected by the
5 department of business, economic development, and tourism
6 pursuant to chapter 486J, as well as obtain the assistance of
7 that department in determining such compliance.

8 (k) The commission shall adopt rules pursuant to chapter
9 91 as may be necessary to implement this section.

10 §486H-B Maximum pre-tax retail price for gasoline sold on
11 a self-serve basis; civil actions. (a) Notwithstanding any law
12 to the contrary, no retail station may sell regular unleaded
13 gasoline at retail, on a self-serve basis, at a price above the
14 maximum pre-tax retail prices established pursuant to subsection
15 (b). The commission shall publish the maximum pre-tax retail
16 prices by means that shall include the internet website for the
17 State of Hawaii. The commission may also publish the retail
18 prices inclusive of all taxes.

19 (b) On a weekly basis, the commission shall determine the
20 maximum pre-tax retail price of gasoline. The maximum pre-tax
21 retail price for regular unleaded gasoline shall consist of the
22 maximum pre-tax wholesale price for regular unleaded gasoline

1 established pursuant to section 486H-A(b), plus a retail
2 marketing margin factor.

3 (c) The retail marketing margin factor shall be \$.16 per
4 gallon for the first year, and shall thereafter be subject to
5 adjustment pursuant to section 486H-D(b).

6 (d) Any retail station that knowingly violates any
7 requirement imposed or rule adopted under this section shall be
8 subject to a civil penalty equal to three times the amount of
9 the overcharge or \$25,000, whichever is greater, and shall be
10 liable for the costs of the action, and reasonable attorney's
11 fees as determined by the court. Within two years from the date
12 the commission obtains actual knowledge of the violation, the
13 commission may institute a civil action in a court of competent
14 jurisdiction to collect the civil penalty, the costs, and the
15 attorney's fees. In the case of ongoing violation, the two-year
16 period shall start from the date of the last violation. The
17 commission may refer any such action to the attorney general as
18 it deems appropriate. As used in this subsection, "overcharge"
19 means the number of gallons of gasoline sold, times the retail
20 price at which the retail station sold regular unleaded
21 gasoline, less taxes assessed, less the maximum pre-tax retail
22 price established pursuant to subsection (b).

1 (e) The commission shall have the power to determine the
2 extent to which a retail station is complying with any
3 requirement imposed or rule adopted under this section,
4 including the power to compel a retail station to submit
5 documents, data, and information necessary and appropriate for
6 the commission to determine such compliance. The commission may
7 use data collected by the department of business, economic
8 development, and tourism pursuant to chapter 486J, as well as
9 obtain the assistance of such department in determining such
10 compliance.

11 (f) The commission shall adopt rules pursuant to chapter
12 91 as may be necessary to implement this section.

13 §486H-C Governor's emergency powers. (a) Notwithstanding
14 any law to the contrary, the governor may suspend in whole or in
15 part, section 486H-A, section 486H-B, or any rule adopted
16 pursuant to those sections whenever the governor issues a
17 written determination that strict compliance with any section or
18 a rule will cause a major adverse impact on the economy, public
19 order, or the health, welfare, or safety of the people of
20 Hawaii. The governor shall publish this determination in
21 accordance with section 1-28.5. The suspension shall take

1 effect upon issuance of the written determination by the
2 governor.

3 (b) Except as provided in subsection (c), the suspension
4 under subsection (a) shall remain in effect until the earlier
5 of:

6 (1) The adjournment of the next regular or special session
7 of the legislature; or

8 (2) The effective date of any legislative enactment
9 intended to address the major adverse impact;
10 provided that if the legislature has enacted legislation to
11 address the major adverse impact, and the governor vetoes the
12 legislation, the suspension shall terminate on the date of that
13 veto, and the pre-tax maximum wholesale price or the pre-tax
14 maximum retail price in effect immediately prior to the issuance
15 of the written determination by the governor shall take effect
16 on the day after the date of the veto; and provided further that
17 if no action is taken by the legislature during the regular or
18 special session to address the major adverse impact, then the
19 pre-tax maximum wholesale price or the pre-tax maximum retail
20 price in effect immediately prior to the issuance of the written
21 determination by the governor shall take effect on the day after
22 adjournment sine die of the regular or special session.

1 (c) If the written determination is issued while the
2 legislature is in session, the suspension under subsection (a)
3 shall remain in effect until the earlier of:

4 (1) The adjournment of that session of the legislature; or

5 (2) The effective date of any legislative enactment
6 intended to address the major adverse impact;

7 provided that if the legislature has enacted legislation to
8 address the major adverse impact, and the governor vetoes the
9 legislation, the suspension shall terminate on the date of that
10 veto, and the pre-tax maximum wholesale price or the pre-tax
11 maximum retail price in effect immediately prior to the issuance
12 of the written determination by the governor shall take effect
13 on the day after the date of the veto; and provided further that
14 if no action is taken by the legislature during the regular or
15 special session to address the major adverse impact, then the
16 pre-tax maximum wholesale price or the pre-tax maximum retail
17 price in effect immediately prior to the issuance of the written
18 determination by the governor shall take effect on the day after
19 adjournment sine die of the regular or special session.

20 §486H-D Adjustments. (a) A manufacturer, wholesaler, or
21 jobber may petition the commission to adjust the maximum pre-tax
22 wholesale price of regular unleaded gasoline in the event of a

1 change in the value of the baseline price for regular unleaded
2 gasoline, the location adjustment factor, the marketing margin
3 factor, or the neighbor island wholesale adjustment factor. The
4 petitioner shall bear the burden of proof to establish by clear
5 and convincing evidence the need for and the amount of any
6 adjustment. The adjustments shall be determined as follows:

7 (1) The value of the baseline price shall be equal to the
8 average of:

9 (A) The spot pipeline daily price for regular
10 unleaded gasoline for Los Angeles;

11 (B) The spot pipeline daily price for regular
12 unleaded gasoline for San Francisco; and

13 (C) The spot daily price for the Pacific Northwest,
14 as reported and published by the Oil Price Information
15 Service for the five business days of the preceding
16 week;

17 (2) The value of the location adjustment factor in effect
18 at the time the petition is filed shall be adjusted to
19 equal the average of the actual acquisition cost to
20 non-refiner marketers to obtain gasoline from refiners
21 or importers for sale on the island of Oahu over the
22 prior twelve-month period, which cost shall be taken

1 from arm's length transactions between non-refiner
2 marketers, and refiners or importers, such as exchange
3 agreements, sales agreements, or other similar
4 agreements; provided that the location adjustment
5 factor shall not exceed the reasonable cost of
6 importing gasoline to the island of Oahu. As used in
7 this paragraph, "actual acquisition cost" means the
8 amount over the base price of regular unleaded
9 gasoline that a non-refiner marketer pays to a third
10 party for delivery of such gasoline into a terminal
11 located on the island of Oahu;

12 (3) The value of the marketing margin factor in effect at
13 the time the petition is filed shall be adjusted by
14 adding to such value the difference between:

15 (A) The average of the difference over the prior
16 twelve-month period between:

17 (i) The dealer tank wagon price for sales for
18 resale; and

19 (ii) The bulk price for sales for resale, for PAD
20 District V,

21 as reported and published by the Energy

22 Information Administration or its successor in

1 Table 31 - "Motor Gasoline Prices by Grade, Sales
2 Type, PAD District, and State" or other source
3 containing the same information; less

4 (B) The average of the difference over the period
5 from 1994 until the most current year between:

6 (i) The dealer tank wagon price for sales for
7 resale; and

8 (ii) The bulk price for sales for resale, for PAD
9 District V,

10 as reported and published by the Energy

11 Information Administration or its successor in

12 Table 31 - "Motor Gasoline Prices by Grade, Sales
13 Type, PAD District, and State" or other source
14 containing the same information;

15 (4) The value of the neighbor island location adjustment
16 factor in effect at the time the petition is filed
17 shall be adjusted to equal the actual acquisition cost
18 to non-refiner marketers to obtain gasoline from a
19 refiner or importer for sale on the island of Kauai,
20 Molokai, Lanai, Maui, or Hawaii, over the prior
21 twelve-month period, which cost shall be taken from
22 arm's length transactions between non-refiner

1 marketers, and refiners or importers, such as exchange
2 agreements, sales agreements, or other similar
3 agreements; provided that the neighbor island location
4 adjustment factor shall not exceed the reasonable cost
5 of importing gasoline to the island of Kauai, Molokai,
6 Lanai, Maui, or Hawaii, from any port on the island of
7 Oahu. As used in this subsection, "actual acquisition
8 cost" means the amount over the base price of regular
9 unleaded gasoline that a non-refiner marketer pay to a
10 third party for delivery of such gasoline into a
11 terminal located on Kauai, Molokai, Lanai, Maui, or
12 Hawaii; and

13 (5) The value of the neighbor island marketing factor in
14 effect at the time the petition is filed shall be
15 adjusted if there are material changes in the cost
16 factors associated with marketing gasoline on the
17 island of Kauai, Molokai, Lanai, Maui, or Hawaii, such
18 as terminaling, storage, or distribution costs.

19 (b) A retail station may petition the commission to adjust
20 the maximum pre-tax retail price of gasoline in the event of a
21 change in the maximum pre-tax wholesale price for regular
22 unleaded gasoline, or the value of the retail marketing margin

1 factor. The petitioner shall bear the burden of proof to
2 establish by clear and convincing evidence the need for and the
3 amount of any adjustment. The adjustment shall be determined as
4 follows:

5 (1) The value of the retail marketing margin factor for
6 regular unleaded gasoline established in section 486H-
7 B(c) shall be adjusted upward only if such value is
8 less than the average of the difference over the prior
9 twelve-month period between:

10 (A) The "through retail outlets" price for sales to
11 end users for regular unleaded gasoline; and

12 (B) The dealer tank wagon price, for sales for resale
13 for regular unleaded gasoline, for PAD District

14 V,

15 as reported and published by the Energy Information
16 Administration or its successor in Table 31 - "Motor
17 Gasoline Prices by Grade, Sales Type, PAD District,
18 and State" or other source containing the same
19 information.

20 (c) If the commission adjusts the maximum pre-tax
21 wholesale price or the maximum pre-tax retail price of regular
22 unleaded gasoline, the commission shall publish its findings and

1 the adjusted prices by means that shall include the internet
2 website for the State of Hawaii.

3 (d) In its discretion and without a petition having been
4 filed, the commission may adjust the maximum pre-tax wholesale
5 price or the maximum pre-tax retail price of regular unleaded
6 gasoline if an adjustment is necessary as a result of a change
7 in the value of the baseline price for regular unleaded
8 gasoline, the location adjustment factor, the marketing margin
9 factor, the neighbor island wholesale adjustment factor, or the
10 retail marketing margin factor.

11 (e) Nothing in section 486H-A or 486H-B shall be construed
12 to prohibit the filing of a petition during the first year after
13 the effective date of this section."

14 2. By adding twelve new definitions to section 486H-1,
15 Hawaii Revised Statutes, to be appropriately inserted and to
16 read as follows:

17 "Commission" means the public utilities commission.

18 "Company retail station" means a retail service station
19 owned and operated by a manufacturer or jobber and where retail
20 prices are set by that manufacturer or jobber.

21 "Dealer retail station" means a retail service station
22 owned by a manufacturer or jobber and operated by a qualified

1 gasoline dealer other than a manufacturer or a jobber under a
2 franchise.

3 "Independent retail station" means a retail service station
4 not owned by a manufacturer or jobber and operated by a
5 qualified gasoline dealer.

6 "Non-refiner marketer" means any person who acquires
7 gasoline for sale in the State of Hawaii, and who is not a
8 refiner located and operating in the State of Hawaii, nor an
9 importer owned by or affiliated with, directly or indirectly, by
10 a refiner located and operating in the State of Hawaii.

11 "Operate" means to engage in the business of selling motor
12 vehicle fuel at a retail service station through any employee,
13 commissioned agent, subsidiary company, or person managing a
14 retail service station under a contract and on a fee arrangement
15 with the manufacturer or jobber.

16 "Other areas" means the second congressional district of
17 the State.

18 "Pre-tax" when used in reference to a price means such
19 price net of the fuel-related or other taxes assessed when the
20 gasoline is sold.

21 "Retail" means a sale of gasoline made to the general
22 public at prices that are displayed on the dispensing equipment.

1 "Retail station" means and includes a company retail
2 station, a dealer retail station, and an independent retail
3 station.

4 "Self-serve basis" means that the retail station allows
5 customers to dispense gasoline into vehicles.

6 "Urban" means the first congressional district of the
7 State."

8 3. By amending section 486H-10.4, Hawaii Revised Statutes,
9 to read as follows:

10 "~~[+]~~ §486H-10.4 ~~[+]~~ Restrictions on manufacturers or jobbers
11 in operating service stations; lease rent controls; definitions.

12 (a) Beginning August 1, 1997, no manufacturer or jobber shall
13 convert an existing dealer ~~[operated]~~ retail ~~[service]~~ station
14 to a company ~~[operated]~~ retail ~~[service]~~ station; provided that
15 nothing in this section shall limit a manufacturer or jobber
16 from:

17 (1) Continuing to operate any company operated retail
18 service stations legally in existence on July 31,
19 1997;

20 (2) Constructing and operating any new retail service
21 stations as company ~~[operated]~~ retail ~~[service]~~

1 stations constructed after August 1, 1997, subject to
2 subsection (b); or

3 (3) Operating a former dealer [operated] retail [service]
4 station for up to twenty-four months until a
5 replacement dealer can be found if the former dealer
6 vacates the service station, cancels the franchise, or
7 is properly terminated or not renewed.

8 (b) No new company [operated] retail [service] station
9 shall be located within one-eighth mile of a dealer [operated]
10 retail [service] station in an urban area, and within one-
11 quarter mile in other areas. ~~[For purposes of this subsection,~~
12 ~~"urban" means the first congressional district of the State, and~~
13 ~~"other areas" means the second congressional district of the~~
14 ~~State.]~~

15 (c) All leases as part of a franchise as defined in
16 section 486H-1, existing on August 1, 1997, or entered into
17 thereafter, shall be construed in conformity with the following:

18 (1) Such renewal shall not be scheduled more frequently
19 than once every three years; and

20 (2) Upon renewal, the lease rent payable shall not exceed
21 fifteen per cent of the gross sales, except for
22 gasoline, which shall not exceed fifteen per cent of

1 the gross profit of product, excluding all related
2 taxes by the dealer operated retail service station as
3 defined in section 486H-1 and 486H-10.4 plus, in the
4 case of a retail service station at a location where
5 the manufacturer or jobber is the lessee and not the
6 owner of the ground lease, a percentage increase equal
7 to any increase which the manufacturer or jobber is
8 required to pay the lessor under the ground lease for
9 the service station. For the purposes of this
10 subsection, "gross amount" means all monetary earnings
11 of the dealer from a dealer operated retail service
12 station after all applicable taxes, excluding income
13 taxes, are paid.

14 The provisions of this subsection shall not apply to any
15 existing contracts that may be in conflict with its provisions.

16 (d) Nothing in this section shall prohibit a dealer from
17 selling a retail service station in any manner.

18 ~~[(e) For the purposes of this section:~~

19 ~~"Company operated retail service station" means a retail~~
20 ~~service station owned and operated by a manufacturer or jobber~~
21 ~~and where retail prices are set by that manufacturer or jobber.~~

~~"Dealer operated retail service station" means a retail service station owned by a manufacturer or jobber and operated by a qualified gasoline dealer under a franchise.~~

~~"Operate" means to engage in the business of selling motor vehicle fuel at a retail service station through any employee, commissioned agent, subsidiary company, or person managing a retail service station under a contract and on a fee arrangement with the manufacturer or jobber.~~

~~"Retail" means a sale of gasoline made to the general public at prices that are displayed on the dispensing equipment.] "~~

SECTION 3. Chapter 486J, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to section 486J-1, Hawaii Revised Statutes, to be appropriately inserted and to read as follows:

"Petroleum commissioner" or "commissioner" means the administrator of the energy, resources, and technology division of the department of business, economic development, and tourism."

2. By amending section 486J-5, Hawaii Revised Statutes, to read as follows:

1 "[f] §486J-5 [f] Analysis of information; audits and
2 inspections; summary reports. (a) The [~~department may,~~
3 petroleum commissioner, with [~~its~~] the commissioner's own staff
4 and other support staff with expertise and experience in, or
5 with, the petroleum industry, shall gather, analyze, and
6 interpret the information submitted to it pursuant to sections
7 486J-3 and 486J-4 and other information relating to the supply
8 and price of petroleum products, with particular emphasis on
9 motor vehicle fuels, including, but not limited to, all of the
10 following:

- 11 (1) The nature, cause, and extent of any petroleum or
12 petroleum products shortage or condition affecting
13 supply;
- 14 (2) The economic and environmental impacts of any
15 petroleum and petroleum product shortage or condition
16 affecting supply;
- 17 (3) Petroleum or petroleum product demand and supply
18 forecasting methodologies utilized by the petroleum
19 industry in Hawaii;
- 20 (4) The prices, with particular emphasis on wholesale and
21 retail motor fuel prices, and any significant changes
22 in prices charged by the petroleum industry for

1 petroleum or petroleum products sold in Hawaii and the
2 reasons for such changes;

3 (5) The income, expenses, and profits, both before and
4 after taxes, of the industry as a whole and of major
5 firms within it, including a comparison with other
6 major industry groups and major firms within them as
7 to profits, return on equity and capital, and price-
8 earnings ratio;

9 (6) The emerging trends relating to supply, demand, and
10 conservation of petroleum and petroleum products;

11 (7) The nature and extent of efforts of the petroleum
12 industry to expand refinery capacity and to make
13 acquisitions of additional supplies of petroleum and
14 petroleum products; and

15 (8) The development of a petroleum and petroleum products
16 information system in a manner which will enable the
17 State to take action to meet and mitigate any
18 petroleum or petroleum products shortage or condition
19 affecting supply.

20 (b) The [~~department may~~] commissioner shall conduct random
21 or periodic audits and inspections of any supplier or suppliers
22 of oil or petroleum products to determine whether they are

1 unnecessarily withholding supplies from the market or are
2 violating applicable policies, laws, or rules. The ~~[department]~~
3 commissioner may solicit assistance of the department of
4 taxation in any such audit. The ~~[department]~~ commissioner shall
5 cooperate with other state and federal agencies to ensure that
6 any audit or inspection conducted by the ~~[department]~~
7 commissioner is not duplicative of the data received by any of
8 their audits or inspections which is available to the
9 ~~[department-]~~ commissioner.

10 (c) The ~~[department-may]~~ commissioner shall analyze the
11 impacts of state and federal policies, rules, and regulations
12 upon the supply and pricing of petroleum products.

13 (d) The ~~[department]~~ commissioner shall publish annually
14 and submit to the governor and the legislature twenty days prior
15 to the first day of the current legislative session a summary,
16 including any analysis and interpretation~~[-]~~ of the information
17 submitted to it pursuant to this chapter~~[-]~~, and any other
18 activities taken by the commissioner, including civil penalties
19 imposed and referrals of violations to the attorney general
20 under section 486J-9. Any person may submit comments in writing
21 regarding the accuracy or sufficiency of the information
22 submitted. At the option of the director, this report may be

1 combined with reporting required by section 196-4(11), in the
2 director's role as state energy resources coordinator."

3 3. By amending section 486J-9, Hawaii Revised Statutes, to
4 read as follows:

5 "[~~4~~]§486J-9[~~4~~] Failure to timely provide information;
6 failure to make and file statements; false statements;
7 penalties[~~-~~]; referral to the attorney general. (a) The
8 [~~department~~] petroleum commissioner shall notify those persons
9 who have failed to timely provide the information specified in
10 section 486J-3 or 486J-4 or requested by the [~~department~~]
11 commissioner under section 486J-3 or 486J-4. If, within five
12 days after being notified of the failure to provide the
13 specified or requested information, the person fails to supply
14 the specified or requested information, the person shall be
15 subject to a civil penalty of not less than [~~\$500~~] \$50,000 per
16 day nor more than [~~\$2,000~~] \$100,000 per day for each day the
17 submission of information is refused or delayed, unless the
18 person has timely filed objections with the [~~department~~]
19 commissioner regarding the information and the [~~department~~]
20 commissioner has held a hearing and, following a ruling by the
21 [~~department,~~] commissioner, the person has properly submitted
22 the issue to a court of competent jurisdiction for review.

1 (b) Any person who wilfully makes any false statement,
2 representation, or certification in any record, report, plan, or
3 other document filed with the [~~department~~] commissioner shall be
4 subject to a civil penalty not to exceed [~~\$20,000-~~] \$500,000,
5 and shall be deemed to have committed an unfair or deceptive act
6 or practice in the conduct of a trade or commerce and subject to
7 the penalties specified in chapter 480. The commissioner shall
8 refer any matter under this subsection to the attorney general,
9 who may exercise any appropriate legal or equitable remedies
10 that may be available to the State.

11 (c) For the purposes of this section, [~~the term~~] "person"
12 means, in addition to the definition contained in section 486J-
13 1, any responsible corporate officer."

14 SECTION 4. Sections 486J-2, 486J-3, 486J-4, 486J-6, 486J-
15 7, 486J-8, 486J-10, and 486J-12, Hawaii Revised Statutes, are
16 amended by substituting the word "commissioner" wherever the
17 word "department" or "director" appears, as the context
18 requires.

19 SECTION 5. Review; report. (a) The department of
20 business, economic development, and tourism shall:

21 (1) Gather, review, analyze, and evaluate publicly
22 available information, studies, and reports, including

1 unsealed documents in Anzai v. Chevron et al. (U.S.
2 District Court for the District of Hawaii, Civil No.
3 98-00792-SPK) and the attorney general's investigation
4 of the petroleum industry, as may be necessary;

5 (2) Gather, review, analyze, and evaluate empirical data
6 to determine whether the Oil Price Information Service
7 index, or other appropriate benchmarks, are applicable
8 to Hawaii's wholesale and retail gasoline markets;

9 (3) Review options available to the legislature and make
10 findings and recommendations concerning appropriate
11 remedies and solutions available to reduce wholesale
12 and retail gasoline prices in Hawaii, including
13 proposals to impose maximum prices on wholesale and
14 retail gasoline and the potential effects of imposing
15 such price caps; and

16 (4) Report findings and recommendations, including
17 proposed implementing legislation, to the legislature
18 no later than twenty days before the convening of the
19 regular session of 2003.

20 (b) The attorney general and the legislative reference
21 bureau shall assist the department by conducting legal and
22 policy analyses, as appropriate, and in drafting legislation.

1 SECTION 6. There is appropriated out of the public
2 utilities commission special fund the sum of \$250,000, or so
3 much thereof as may be necessary for fiscal year 2002-2003,
4 which shall be deposited into the state general fund for the
5 purposes of this part.

6 The sum appropriated shall be expended by the public
7 utilities commission for the purposes of this part.

8 SECTION 7. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$250,000, or so much
10 thereof as may be necessary for fiscal year 2002-2003, for the
11 department of business, economic development, and tourism to pay
12 the costs of contracting for the services of one or more persons
13 with expertise and experience in, or with, the petroleum
14 industry, to assist the department of business, economic
15 development, and tourism in its review and report under section
16 5 of this Act; provided that any expenditure of funds by the
17 department pursuant to this section shall be without regard to
18 chapter 103D, Hawaii Revised Statutes.

19 The sum appropriated shall be expended by the department of
20 business, economic development, and tourism for the purposes of
21 this part.

22 PART II.

1 SECTION 8. The purpose of this part is to require the
2 government of the State of Hawaii to significantly improve its
3 energy management in state facilities in order to save taxpayer
4 dollars and reduce emissions that contribute to air pollution
5 and global climate change.

6 SECTION 9. Chapter 196, Hawaii Revised Statutes, is
7 amended by adding a new part to be appropriately designated and
8 to read as follows:

9 "PART" . ENERGY EFFICIENCY IN STATE FACILITIES

10 §196-A Definitions. As used in this part:

11 "Acquisition" means acquiring by contract supplies or
12 services, including construction, by and for the use of the
13 State through purchase or lease, whether the supplies or
14 services are already in existence or must be created, developed,
15 demonstrated, or evaluated. Acquisition begins at the point
16 when agency needs are established and includes the description
17 of requirements to satisfy agency needs, solicitation and
18 selection of sources, award of contracts, contract financing,
19 contract performance, contract administration, and those
20 technical and management functions directly related to the
21 process of fulfilling agency needs by contract.

1 "Agency" means any executive department, independent
2 commission, board, bureau, office, or other establishment of the
3 State, or any quasi-public institution that is supported in
4 whole or in part by state funds.

5 "Energy-savings performance contract" means an agreement
6 for the provision of energy services and equipment, including
7 building energy conservation enhancing retrofits and alternate
8 energy technologies, in which a private sector person or company
9 agrees to finance, design, construct, install, maintain,
10 operate, or manage energy systems or equipment to improve the
11 energy efficiency of, or produce energy in connection with, a
12 facility in exchange for a portion of the cost savings, lease
13 payments, or specified revenues including utility rebates and
14 any other available incentives, and the level of payments is
15 made contingent upon the verified energy savings, energy
16 production, avoided maintenance, avoided energy equipment
17 replacement, or any combination of the foregoing bases.

18 "ENERGY STAR" means a labeling program introduced by the
19 United States Environmental Protection Agency in 1992 as a
20 voluntary labeling program designed to identify and promote
21 energy-efficient products, in order to reduce carbon dioxide
22 emissions.

1 "Exempt facility" or "exempt mobile equipment" means a
2 facility or mobile equipment for which an agency utilizes
3 criteria established by the energy resources coordinator to
4 determine that compliance with this part is not practical.

5 "Facility" means a building or buildings or similar
6 structure owned or leased by, or otherwise under the
7 jurisdiction of, an agency.

8 "Life-cycle cost-effective" means the life-cycle costs of a
9 product, project, or measure that are estimated to be equal to
10 or less than the base case, i.e., current or standard practice
11 or product.

12 "Life-cycle costs" means the sum of the present values of
13 investment costs, capital costs, installation costs, energy
14 costs, operating costs, maintenance costs, and disposal costs,
15 over the lifetime of the project, product, or measure.

16 "Mobile equipment" means any state-owned vessel, aircraft,
17 or off-road vehicle.

18 "Renewable energy" means energy produced by solar, energy
19 conserved by passive solar design/daylighting, ocean thermal,
20 wind, wave, geothermal, waste-to-energy, or biomass power.

21 "Renewable energy technology" means technology that uses
22 renewable energy to provide light, heat, cooling, or mechanical

1 or electrical energy for use in facilities or other activities.
2 The term includes the use of integrated whole-building designs
3 that rely upon renewable energy resources, including passive
4 solar design/daylighting.

5 "Source energy" means the energy that is used at a site and
6 consumed in producing and delivering energy to a site, including
7 power generation, transmission, and distribution losses, and
8 that is used to perform a specific function, such as space
9 conditioning, lighting, or water heating.

10 "Utility" means a public utility as defined in section
11 269-1. Utility includes federally owned nonprofit producers,
12 county organizations, and investor or privately owned producers
13 regulated by the state or federal government, cooperatives owned
14 by members and providing services mostly to their members, and
15 other nonprofit state and county agencies serving in this
16 capacity.

17 "Utility energy-efficiency service" means demand-side
18 management services provided by a utility to improve the
19 efficiency of use of the commodity, such as electricity and gas
20 being distributed. Services may include energy efficiency and
21 renewable energy project auditing, financing, design,
22 installation, operation, maintenance, and monitoring.

1 §196-B Greenhouse gases reduction goal. Through life-
2 cycle cost-effective energy measures, each agency shall reduce
3 its greenhouse gas emissions attributed to facility energy use
4 by thirty per cent by January 1, 2012, compared to emission
5 levels in calendar year 1990. In order to encourage optimal
6 investment in energy improvements, agencies may count greenhouse
7 gas reductions from improvements in non-facility energy use
8 toward this goal to the extent that these reductions are
9 approved by the coordinator.

10 §196-C Energy efficiency improvement goals. (a) Through
11 life-cycle cost-effective measures, each agency shall reduce
12 energy consumption per gross square foot of its facilities,
13 excluding laboratory facilities, by twenty per cent by
14 January 1, 2007, and thirty per cent by January 1, 2012,
15 relative to calendar year 1990. No facility shall be exempt
16 from these goals unless it meets criteria for exemptions
17 established by the coordinator.

18 (b) Through life-cycle cost-effective measures, each
19 agency shall reduce energy consumption per square foot, per unit
20 of production, or per other unit as applicable, of its
21 laboratory facilities by fifteen per cent by January 1, 2007,
22 and twenty-five per cent by January 1, 2012, relative to

1 calendar year 1995. No facility shall be exempt from these
2 goals unless it meets criteria for exemptions established by the
3 coordinator.

4 (c) Each agency shall strive to expand the use of
5 renewable energy within its facilities and in its activities by
6 implementing renewable energy projects and by purchasing
7 electricity from renewable energy sources. Through life-cycle
8 cost-effective measures, each agency shall provide twenty per
9 cent of its remaining energy requirements, after energy
10 efficiency improvement goals have been achieved, with renewable
11 energy resources.

12 (d) Through life-cycle cost-effective measures, each
13 agency shall reduce the use of petroleum generated energy within
14 its facilities. Agencies may accomplish this reduction by
15 switching to less greenhouse gas-intensive or renewable energy
16 sources, by eliminating unnecessary fuel use, or by other
17 appropriate methods. Where alternative fuels are not practical
18 or life-cycle cost-effective, agencies shall strive to improve
19 the efficiency of their facilities.

20 (e) The State shall strive to reduce total energy use and
21 associated greenhouse gas and other air emissions, as measured
22 at the source. To that end, agencies shall undertake life-cycle

1 cost-effective projects in which source energy decreases, even
2 if site energy use increases. In those cases, agencies shall
3 receive credit toward energy reduction goals through guidelines
4 established by the coordinator.

5 (f) Through life-cycle cost-effective measures, agencies
6 shall reduce water consumption and associated energy use in
7 their facilities to reach the goals set under this part. Where
8 possible, water cost savings and associated energy cost savings
9 shall be included in energy-savings performance contracts and
10 other financing mechanisms.

11 (g) Each agency's biennial budget submission shall include
12 funding necessary to achieve the goals of this part. Budget
13 submissions shall include the costs associated with encouraging
14 the use of, administering, and fulfilling agency
15 responsibilities under energy-savings performance contracts,
16 utility energy-efficiency service contracts, and other
17 contractual provisions for achieving conservation goals
18 implementing life-cycle cost-effective measures, procuring life-
19 cycle cost-effective products, and constructing sustainably
20 designed new buildings, among other energy costs.

21 The director of finance shall issue guidelines to assist
22 agencies in developing appropriate requests that support sound

1 investments in energy improvements and energy-using products,
2 and shall consider establishing a fund that agencies may draw on
3 to finance exemplary energy management activities and
4 investments with higher initial costs but lower life-cycle
5 costs.

6 (h) Each agency shall develop an annual implementation
7 plan for fulfilling the requirements of this part. The plans
8 shall be included in the annual reports to the coordinator.

9 §196-D Annual report. Beginning January 1, 2004, each
10 agency shall measure and report annually to the coordinator on
11 its progress in meeting the requirements of this part.

12 The report shall include:

13 (1) How the agency is using each of the strategies
14 described in this part to help meet energy and
15 greenhouse gas reduction goals;

16 (2) A listing and explanation as to why certain
17 strategies, if any, have not been used; and

18 (3) A listing and explanation of exempt facilities.

19 §196-E Senior agency official. Each agency shall
20 designate a senior official to be responsible for meeting the
21 goals and requirements of this part, including preparation of
22 the annual report. Designated officials shall participate in

1 the interagency energy policy committee established under
2 section 196-G(c).

3 §196-F Agency energy teams. Each agency shall form a
4 technical support team consisting of appropriate procurement,
5 legal, budget, management, and technical representatives to
6 expedite and encourage the agency's use of appropriations,
7 energy-savings performance contracts, and other alternative
8 financing mechanisms necessary to meet the goals and
9 requirements of this part. Agency energy team activities shall
10 be undertaken in collaboration with each agency's representative
11 to the interagency energy policy committee.

12 §196-G Interagency coordination; policy committee. (a)
13 The coordinator shall be responsible for evaluating each
14 agency's progress in improving energy management and for
15 submitting agency energy scorecards to the governor and the
16 legislature to report progress.

17 The coordinator, in consultation other agencies, shall
18 develop the agency energy scorecards and scoring system to
19 evaluate each agency's progress in meeting the goals of this
20 part. The scoring criteria shall include:

21 (1) The extent to which agencies are taking advantage of
22 key tools to save energy and reduce greenhouse gas

1 emissions, such as energy-savings performance
2 contracts, utility energy-efficiency service
3 contracts, ENERGY STAR and other energy efficient
4 products, renewable energy technologies, electricity
5 from renewable energy sources, and other strategies
6 and requirement;

7 (2) Overall efficiency;

8 (3) Greenhouse gas reduction; and

9 (4) Use of other innovative energy efficiency practices.

10 The scorecards shall be based on the annual energy reports
11 submitted to the coordinator.

12 (b) The coordinator shall be responsible for working with
13 agencies to ensure that they meet the goals of this part and
14 report their progress. The coordinator shall develop and issue
15 guidelines for agencies' preparation of their annual reports to
16 the coordinator on energy management. The coordinator shall
17 also have primary responsibility for collecting and analyzing
18 the data and shall ensure that agency reports are received in a
19 timely manner.

20 (c) There is established within the department of
21 business, economic development, and tourism, an interagency
22 energy policy committee consisting of senior agency officials,

1 to be chaired by the coordinator. The committee shall be
2 responsible for encouraging implementation of energy efficiency
3 policies and practices. The major energy-consuming agencies, as
4 designated by the coordinator, shall participate on the
5 committee. The committee shall communicate its activities to
6 all designated senior agency officials to promote coordination
7 and achievement of the goals of this part.

8 §196-H Public-private advisory committee. (a) The
9 coordinator shall appoint an advisory committee consisting of
10 representatives from:

- 11 (1) State agencies;
 - 12 (2) County governments;
 - 13 (3) Energy service companies;
 - 14 (4) Utility companies;
 - 15 (5) Equipment manufacturers;
 - 16 (6) Construction and architectural companies;
 - 17 (7) Environmental, energy, and consumer groups; and
 - 18 (8) Other energy-related organizations.
- 19 (b) The committee shall provide input on state energy
20 management, including how to:

1 (1) Improve the use of energy-savings performance

2 contracts and utility energy-efficiency service

3 contracts;

4 (2) Improve procurement of ENERGY STAR and other energy

5 efficient products;

6 (3) Improve building design;

7 (4) Reduce process energy use; and

8 (5) Enhance applications of efficient and renewable energy

9 technologies at state facilities.

10 (c) The committee shall be placed in the department of

11 business, economic development, and tourism for administration

12 purposes.

13 §196-I Life-cycle cost analysis. Agencies shall use life-

14 cycle cost analysis in making decisions about their investments

15 in products, services, construction, and other projects to lower

16 the State's costs and to reduce energy and water consumption.

17 Where appropriate, agencies shall consider the life-cycle costs

18 of combinations of projects, particularly to encourage bundling

19 of energy efficiency projects with renewable energy projects.

20 Agencies shall retire inefficient equipment on an

21 accelerated basis where replacement results in lower life-cycle

22 costs. Agencies that minimize life-cycle costs with efficiency

1 measures shall be recognized in their scorecard evaluations
2 established under section 196-G(a).

3 §196-J Facility energy audits. Agencies shall conduct
4 energy and water audits for approximately ten per cent of their
5 facilities each year, either independently or through energy-
6 savings performance contracts or utility energy-efficiency
7 service contracts.

8 §196-K Financing mechanisms. (a) Agencies shall maximize
9 their use of available alternative financing contracting
10 mechanisms, including energy-savings performance contracts and
11 utility energy-efficiency service contracts, when life-cycle
12 cost-effective, to reduce energy use and cost in their
13 facilities and operations. Energy-savings performance contracts
14 and utility energy-efficiency service contracts shall provide
15 significant opportunities for making state facilities more
16 energy efficient at no net cost to taxpayers.

17 (b) Agencies that perform energy efficiency and renewable
18 energy system retrofitting may continue to receive budget
19 appropriations for energy expenditures at an amount that will
20 not fall below the pre-retrofitting energy budget but will rise
21 in proportion to any increase in the agency's overall budget for
22 the duration of the performance contract or project payment

1 term. A portion of the moneys saved through efficiency and
2 renewable energy system retrofitting shall be set aside to pay
3 for any costs directly associated with administering energy
4 efficiency and renewable energy system retrofitting programs
5 incurred by the agency.

6 (c) Notwithstanding any law to the contrary relating to
7 the award of public contracts, any agency desiring to enter into
8 an energy performance contract shall do so in accordance with
9 the following provisions:

- 10 (1) The agency shall issue a public request for proposals,
11 advertised in the same manner as provided in chapter
12 103D, concerning the provision of energy efficiency
13 services or the design, installation, operation, and
14 maintenance of energy equipment, or both. The request
15 for proposals shall contain terms and conditions
16 relating to submission of proposals, evaluation, and
17 selection of proposals, financial terms, legal
18 responsibilities, and other matters as may be required
19 by law and as the agency determines appropriate;
- 20 (2) Upon receiving responses to the request for proposals,
21 the agency may select the most qualified proposal or
22 proposals on the basis of the experience and

1 qualifications of the proposers, the technical
2 approach, the financial arrangements, the overall
3 benefits to the agency, and other factors determined
4 by the agency to be relevant and appropriate;

5 (3) The agency thereafter may negotiate and enter into an
6 energy performance contract with the person or company
7 whose proposal is selected as the most qualified based
8 on the criteria established by the agency;

9 (4) The term of any energy performance contract entered
10 into pursuant to this section shall not exceed fifteen
11 years;

12 (5) Any energy performance contract may provide that the
13 agency ultimately shall receive title to the energy
14 system being financed under the contract; and

15 (6) Any energy performance contract shall provide that
16 total payments shall not exceed total savings.

17 §196-L State energy projects. State energy projects may
18 be implemented under this chapter with the approval of the
19 comptroller and the director of finance. Notwithstanding
20 section 196-K or section 36-41, the comptroller or the senior
21 agency official of the department of accounting and general
22 services, along with the director of finance, may exempt a state

1 energy project from the advertising and competitive bidding
2 requirements of section 196-K or section 36-41 and chapters 103
3 and 103D, if the comptroller deems exemption appropriate for
4 energy projects with proprietary technology or necessary to meet
5 the goals of the legislature. In addition, this section shall
6 be construed to provide the greatest possible flexibility to
7 agencies in structuring agreements entered into so that economic
8 benefits and existing energy incentives may be used and
9 maximized and financing and other costs to agencies may be
10 minimized. The specific terms of energy performance contracting
11 under section 36-41 may be altered if deemed advantageous to the
12 agency and approved by the director of finance and the senior
13 agency official.

14 §196-M Energy efficient products. (a) Agencies shall
15 select, where life-cycle cost-effective, ENERGY STAR and other
16 energy efficient products when acquiring energy-using products.
17 For product groups where ENERGY STAR labels are not yet
18 available, agencies may select products that are in the upper
19 twenty-five per cent of energy efficiency as designated by the
20 United States Department of Energy, Office of Energy Efficiency
21 and Renewable Energy, Federal Energy Management Program.

1 Agencies shall incorporate energy efficient criteria
2 consistent with designated energy efficiency levels into all
3 guide specifications and project specifications developed for
4 new construction and renovation, as well as into product
5 specification language developed for all purchasing procedures.

6 The State shall also consider the creation of financing
7 agreements with private sector suppliers to provide private
8 funding to offset higher up-front costs of efficient products.

9 (b) Agencies shall strive to meet the ENERGY STAR building
10 criteria for energy performance and indoor environmental quality
11 in their eligible facilities to the maximum extent practicable
12 by December 31, 2005. Agencies may use energy-savings
13 performance contracts, utility energy-efficiency service
14 contracts, or other means to conduct evaluations and make
15 improvements to facilities. Facilities that rank in the top
16 twenty-five per cent in energy efficiency relative to comparable
17 commercial and state buildings shall receive the ENERGY STAR
18 building label or its equivalent as determined by the
19 coordinator. Agencies shall integrate this rating tool into
20 their general facility audits.

21 (c) The State shall employ sustainable design principles
22 and agencies shall apply the principles to the siting, design,

1 and construction of new facilities. Agencies shall optimize
2 life-cycle costs, pollution, and other environmental and energy
3 costs associated with the construction, life-cycle operation,
4 and decommissioning of the facility. Agencies shall consider
5 using energy-savings performance contracts or utility energy-
6 efficiency service contracts to aid them in constructing
7 sustainably designed buildings.

8 (d) Agencies entering into leases, including the
9 renegotiation or extension of existing leases, shall incorporate
10 lease provisions that encourage energy and water efficiency
11 wherever life-cycle cost-effective. Build-to-suit lease
12 solicitations shall contain criteria encouraging sustainable
13 design and development, energy efficiency, and verification of
14 facility performance. Agencies shall include a preference for
15 facilities having an ENERGY STAR building label in their
16 selection criteria for acquiring leased facilities. In
17 addition, all agencies shall encourage lessors to apply for an
18 ENERGY STAR building label and to explore and implement projects
19 that will reduce costs to the State, including projects carried
20 out through the lessors' energy-savings performance contracts or
21 utility energy-efficiency service contracts.

(e) Agencies shall implement energy reduction systems, and other highly efficient systems, in new construction or retrofit projects when life-cycle cost-effective. Agencies shall consider combined cooling, heat, and power systems when determined to be the most cost-effective when measured against other alternatives on a life-cycle cost basis. Agencies shall survey local natural resources to optimize use of available solar, ocean thermal, biomass, bioenergy, geothermal, or other naturally occurring energy sources.

(f) Agencies shall use off-grid generation systems, including solar hot water, solar electric, solar outdoor lighting, small wind turbines, fuel cells, and other off-grid alternatives, where such systems are life-cycle cost-effective and offer benefits including energy efficiency, pollution prevention, source energy reductions, avoided infrastructure costs, or expedited service.

§196-N Electricity use. To advance the greenhouse gas and renewable energy goals of this part, and reduce source energy use, each agency shall strive to use electricity from clean, efficient, and renewable energy sources. An agency's efforts in purchasing electricity from efficient and renewable energy

1 sources shall be taken into account in assessing the agency's
2 progress and formulating its score card under section 196-G(a).

3 **§196-O Competition.** Agencies shall take advantage of
4 competitive opportunities in the electricity and natural gas
5 markets to reduce costs and enhance services. Agencies are
6 encouraged to aggregate demand across facilities or agencies to
7 maximize their economic advantage.

8 **§196-P Reduced greenhouse gas intensity of electric power.**

9 When selecting electricity providers, agencies shall purchase
10 electricity from sources that use high efficiency electric
11 generating technologies when life-cycle cost-effective.

12 Agencies shall consider the greenhouse gas intensity of the
13 source of the electricity and strive to minimize the greenhouse
14 gas intensity of purchased electricity.

15 **§196-Q Purchasing electricity from renewable energy**
16 sources. Each agency shall evaluate its current use of
17 electricity from renewable energy sources and report this level
18 in its annual report to the coordinator. Based on this review,
19 each agency shall adopt policies and pursue projects that
20 increase the use of such electricity. Agencies shall include
21 provisions for the purchase of electricity from renewable energy
22 sources as a component of their requests for bids whenever

1 procuring electricity. Agencies may use savings from energy
2 efficiency projects to pay additional incremental costs of
3 electricity from renewable energy sources.

4 In evaluating opportunities to comply with this section,
5 agencies shall consider any renewable portfolio standard
6 specified in the restructuring guidelines for the State and the
7 United States Environmental Protection Agency guidelines on
8 crediting renewable energy power.

9 §196-R Mobile equipment. Each agency shall seek to
10 improve the design, construction, and operation of its mobile
11 equipment, and shall implement all life-cycle cost-effective
12 energy efficiency measures that result in cost savings while
13 improving mission performance. To the extent that such measures
14 are life-cycle cost-effective, agencies shall consider enhanced
15 use of alternative or renewable-based fuels.

16 §196-S Management strategies. Agencies shall use the
17 following management strategies in meeting the goals of this
18 part:

- 19 (1) Employee incentive programs to reward exceptional
20 performance in implementing this part;
21 (2) Performance evaluations of successful implementation
22 of this part in areas such as energy-savings

1 performance contracts, sustainable design, energy
2 efficient procurement, energy efficiency, water
3 conservation, and renewable energy projects and
4 performance evaluations of agency heads, members of
5 the agency energy team, principal program managers,
6 heads of field offices, facility managers, energy
7 managers, and other appropriate employees;

8 (3) Agencies shall be allowed to retain a portion of
9 savings generated from efficient energy and water
10 management and shall use the savings at the facility
11 or site where the savings occur to provide greater
12 incentives for that facility and its site managers to
13 undertake more energy management initiatives, invest
14 in renewable energy systems, and purchase electricity
15 from renewable energy sources;

16 (4) Training and education shall be provided for all
17 appropriate personnel relating to the energy
18 management strategies contained in this part,
19 including the incorporation into existing procurement
20 courses information on energy management tools,
21 energy-savings performance contracts, utility energy-

1 efficiency service contracts, energy efficient

2 products, and life-cycle cost analysis; and

3 (5) Agencies shall designate showcase facilities to
4 highlight energy or water efficiency and renewable
5 energy improvements."

6 SECTION 10. Chapter 196, Hawaii Revised Statutes, is
7 amended by designating sections 196-1 to 196-7 as:

8 "PART I. GENERAL PROVISIONS"

9 SECTION 11. Within one hundred twenty days after the
10 effective date of this Act, the director of finance shall:

11 (1) Develop and issue guidelines to agency budget officers
12 on the preparation of annual funding requests
13 associated with the implementation of this Act for the
14 budget for fiscal year 2003-2004;

15 (2) In collaboration with the coordinator, inform agencies
16 how to retain savings and reinvest in other energy and
17 water management projects; and

18 (3) In collaboration with the coordinator, periodically
19 brief agency procurement executives on the use of
20 energy management tools, including energy-savings
21 performance contracts, utility energy-efficiency
22 service contracts, and procurement of energy efficient

1 products and electricity from renewable energy
2 sources.

3 SECTION 12. Within one hundred eighty days after the
4 effective date of this Act, the coordinator, in collaboration
5 with other agency heads, shall:

6 (1) Develop and issue guidelines to assist agencies in
7 measuring energy per square foot, per unit of
8 production, or other applicable unit in industrial,
9 laboratory, research, and other energy-intensive
10 facilities;

11 (2) Establish criteria for determining which facilities
12 are exempt from the Act and provide guidance for
13 agencies to request proposed exemptions;

14 (3) Develop and issue guidelines to assist agencies in
15 calculating appropriate energy baselines for
16 previously exempt facilities and facilities occupied
17 after December 31, 2002, in order to measure progress
18 toward goals;

19 (4) Develop and issue guidelines to clarify how agencies
20 determine the life-cycle cost for investments required
21 by this Act, including how to compare different energy
22 and fuel options and assess the current tools;

- 1 (5) Develop and issue guidelines for providing credit
2 toward energy efficiency goals for cost-effective
3 projects where source energy use declines but site
4 energy use increases;
- 5 (6) Develop and issue guidelines to assist each agency to
6 determine a baseline of water consumption;
- 7 (7) Develop and issue guidelines to assist agencies in
8 ensuring that all project cost estimates, bids, and
9 agency budget requests for design, construction, and
10 renovation of facilities are based on life-cycle
11 costs, and that incentives for contractors involved in
12 facility design and construction are structured to
13 encourage the contractors to design and build at the
14 lowest life-cycle cost;
- 15 (8) Make information available on opportunities to
16 purchase electricity from renewable energy sources,
17 including relevant state and county regulations, and
18 update the information as necessary based on
19 technological advances and market changes, but at
20 least every two years;

1 (9) Develop Internet-based tools to assist individual and
2 agency purchasers in identifying and purchasing energy
3 efficient products for acquisition;

4 (10) Develop and issue sustainable design and development
5 principles for the siting, design, and construction of
6 new facilities; and

7 (11) Develop model lease provisions that incorporate energy
8 efficiency and sustainable design.

9 SECTION 13. Within three hundred sixty-five days after the
10 effective date of this Act, the coordinator, in collaboration
11 with other agency heads, shall:

12 (1) Provide guidance for counting renewable and highly
13 efficient energy projects and purchases of electricity
14 from renewable and highly efficient energy sources
15 toward agencies' progress in reaching greenhouse gas
16 and energy reduction goals;

17 (2) Develop goals for the amount of energy generated at
18 state facilities from renewable energy technologies;

19 (3) Support efforts to develop standards for the
20 certification of low environmental impact renewable
21 energy facilities to facilitate the State's purchase
22 of such power;

1 (4) Work with the director of finance to develop a plan
2 for purchasing advanced energy products in bulk
3 quantities for use by multiple agencies;

4 (5) Develop and issue guidelines for agency use estimating
5 the greenhouse gas emissions attributable to facility
6 energy use, including emissions associated with the
7 production, transportation, and use of energy consumed
8 in state facilities; and

9 (6) Establish water conservation goals for state agencies.

10 SECTION 14. If an agency determines that a provision in
11 this Act is inconsistent with its mission, the agency may ask
12 the coordinator for a waiver of the provision. The coordinator
13 shall include a list of any waivers it grants in the annual
14 report to the governor and the legislature.

15 PART III.

16 SECTION 15. In codifying the new sections added by section
17 2(1) of this Act, the revisor of statutes shall substitute
18 appropriate section numbers for the letters used in designating
19 the new sections in this Act.

20 SECTION 16. It is the intent of this Act not to jeopardize
21 the receipt of any federal aid nor to impair the obligation of
22 the State or any agency thereof to the holders of any bond

1 issued by the State or by any such agency, and to the extent,
2 and only to the extent, necessary to effectuate this intent, the
3 governor may modify the strict provisions of this Act, but shall
4 promptly report any such modification with reasons therefor to
5 the legislature at its next session thereafter for review by the
6 legislature.

7 SECTION 17. If any provision of this Act, or the
8 application thereof to any person or circumstance is held
9 invalid, the invalidity does not affect other provisions or
10 applications of the Act, which can be given effect without the
11 invalid provision or application, and to this end the provisions
12 of this Act are severable.

13 SECTION 18. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 19. This Act shall take effect upon its approval;
16 provided that:

- 17 (1) Section 2 shall take effect on July 1, 2004; and
18 (2) Sections 6 and 7 shall take effect on July 1, 2002.

